THE HON'BLE SRI JUSTICE J.CHELAMESWAR
and
THE HON'BLE SRI JUSTICE D. APPA RAO

W.P. No.14389 of 2006

Dated: 26.10.2006

Between:-

Kattreddy Satyanarayana

..Petitioner

And

1. The Superintendent of Police, Eluru and 4 others.

..Respondents

ORDER (Per JC,J) :

This writ petition is filed with a prayer as follows:

> "For the reasons stated in the above accompanying affidavit, the petitioner herein prays that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of habeas corpus directing the respondents 1 to 4 to produce the son of the petitioner by name Katareddy Vankata Gangadhar, aged 24 years, R/o Pedakapavaram Village, Akiveedu Mandal, West Godavari District, before this Hon'ble Court and set him at his liberty, and such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

The petitioner's complaint in the writ petition is

that his son Venkata Gangadhar, who was working as an Assistant with the 5th respondent-Marine & Agro Products Pvt. Ltd., Bhimavaram, West Godavari District, was missing from

15-12-2005. He therefore gave a report before the 3rd respondent-the Station House Officer, II Town Police Station, Bhimavaram, on 19-12-2005 praying to that appropriate action be taken to trace out his son. As no action was taken by the

3rd respondent, the petitioner made representations before the 1st respondent complaining about the inaction of the

3rd respondent.

According to the petitioner the representation did not evoke any response from the 1st respondent and no action was taken, the petitioner further stated in his affidavit filed in support of the writ petition, that on 15th and 16th December, 2005, certain persons whose names were not disclosed in the writ petition, but described to be persons belonging to the

5th respondent came to his residence and informed that his son was absconding with an amount of Rs.1,20,000/-, a motorcycle and a cellular phone, belonging to the 5th respondent-company. It is further alleged that the petitioner came to know that the 5th

respondent-company lodged a complaint against his son before the 4th respondent. A categorical assertion is made at para 7 of the affidavit that on 25-06-2006, the petitioner visited the 3rd respondent police station for enquiring about the whereabouts of his missing son and at that time, the petitioner found his son present in the police station. The details of the other allegations may not be necessary for the present.

In the background of the abovementioned allegations, this Court ordered notice to the respondents. On behalf of the first four respondents on 24-07-2006, the learned Advocate General took notice and sought time to file a counter. Eventually, the 3rd respondent filed counter-affidavit on 30-06-2006. The respondets 1, 2 and 4, at that point of time, did not choose to file a counter.

In the counter-affidavit filed by the 3rd respondent, it is admitted that the petitioner did approach the 3rd respondent on 19-12-2005 and lodged a complaint before him stating that his son Venkata Gangadhar was missing from 15-12-2005. The 3rd respondent further stated in the affidavit that he made an entry in the General Diary of the station concerned on the same day and caused enquiries about the missing person. He also examined Managing Director of the

5th respondent-company. But did not register F.I.R. in the matter. On the other hand, the 3rd respondent stated in the affidavit that the Managing Director of the 5th respondent-company on enquiry informed 3rd respondent that the petitioner's son, who was working with the

5th respondent, was absconding from service with company's money to a tune of Rs.1,20,000/- along with a motorcycle and a cellular phone belonging to the company. In spite of the receipt of the said information, the 3rd respondent never chose to register a crime against the petitioner's son.

When the matter was taken up for hearing on 23-08-2006, to a query posed by this Court; as to why no crime was registered in spite of the fact that the 3rd respondent made a general diary entry, regarding the complaint made by the petitioner's father, it was stated by the learned Government Pleader, appearing on behalf of the Advocate General, on specific instructions, that the contents of the complaint lodged by the petitioner disclose that the offence, if any, was committed beyond the jurisdiction of the

3rd respondent and therefore, the 3rd respondent did not chose to register F.I.R. For the reasons recorded on 23-08-2006, this Court came to the conclusion that the entire episode appears suspicious and the matter

requires an investigation/examination by an independent agency and therefore, directed the C.B.C.I.D. to enquire into and submit report to this Court.

In view of the tentative conclusion reached by this Court that the matter is requires an examination by an independent agency like C.B.C.I.D. and in view of the doubt entertained by this Court that the respondents 1 to 4 are misleading the Court, this Court observed that until the C.B.C.I.D. enquires the matter and submits a report to this Court, none of the incumbents of the offices of the respondents shall continue in the office. Subsequently, the State took steps to relieve the incumbents of the offices of the first four respondents. The role played by the 1st respondent requires a separate examination in this matter and we shall come to it later.

Pursuant to the abovementioned order, the Additional Director General of C.B.C.I.D., Andhra Pradesh, submitted a report dated 16-09-2006. After an elaborate enquiry and examining 37 persons and 47 documents, the C.B.C.I.D. came to the conclusion that there were various lapses on the part of the respondents 1 to 4 herein.

One of the relevant conclusions reached by the C.B.C.I.D. is that the General Diary Register, kept in the police station, dated 19-12-2005 was tampered with, at the instance of the

3rd respondent herein. Another important factor reported by the C.B.C.I.D. is that the motorcycle alleged to have been in the custody of the son of the petitioner was in fact found abandoned in the fields within Bhimavaram II Town Police Station limits on 17-08-2006 at about 6 P.M. and the same was brought to the Bhimavaram I Town Police Station, of which, the Circle Inspector is the 2nd respondent in the writ petition. The recovery of the said motorcycle was not brought on record for a period of two weeks. This fact was not brought to this Court until C.B.C.I.D. report is submitted to this Court.

In the background of the abovementioned facts found by the C.B.C.I.D., the C.B.C.I.D. submitted an elaborate report regarding lapses on the part of the respondents 1 to 4 herein. Though the C.B.C.I.D. has not given any information as to the whereabouts of the missing person Venkata Gangadhar, a faint suggestion is made that the said Gangadhar was no more. Though the C.B.C.I.D. did not make emphatic statement in this regard, a statement is made that there were some unidentified dead bodies found around the place. The report in this regard reads as follows:-

> "The Akividu Police have also verified about the dead bodies of the male and female persons aged in the mid twenties, found fead on the railway track vide Nidadavolu Railway Police Station Cr.No.51/06 u/s 174

> Cr.P.C. on 01.09.06 and rules out the suspicion about the missing person Gangadhar.
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> Similarly, the C.D. files in Cr. Nos.1/06 both u/s 302 & 201 IPC of Buttayagudem P.S. of Jangareddigudem Sub Division, West Godavari District were also secured, in which the skeletal remains of burnt human bodies were found on 3.1.06 near Kamsalikunta village and on 8.2.06 near Laxmipuram village respectively. Samples have been preserved during postmortem examination. Akividu Police were advised to get the D.N.A. examination done in respect of the parents of the missing person and compare with the D.N.A. of the above two cases of Buttayagudem Police Station."

On the receipt of the said report, we recorded the same in the order dated 18-09-2006 and directed the matter to be listed for further orders on 25-09-2006.

On 25-09-2006, the respondents produced the alleged detenue before the Court. We directed the alleged detenue to be produced before the concerned Magistrate and record his statement. At that stage, the respondents 1 to 4 made an assertion that the writ petitioner is aware of the fact that his son was not detained by any one of the respondents herein, but working some where in the State of Karnataka and he deliberately suppressed the said fact and filed the present writ petition misleading the Court.

We, therefore, directed the matter to be listed for further hearing on 16-10-2006 and directed the learned Judicial Magistrate of First Class, Bhimavaram, to record the statement of the alleged detenue in the mean while.

In an attempt to substantiate their allegations that the petitioner suppressed the truth and misled the Court, the respondents also brought the statement of one Miriyala Anil and Ulli Chakravarthi, who are said to be the roommates of the alleged detenue at Bhimavaram, who, in fact, were examined by the C.B.C.I.D. during the course of their enquiry. These two persons were examined ostensibly under Section 164 Cr.P.C. in connection with the Crime No.111 of 2006 of Akiveedu Police Station. Incidentally, the said crime No.111 of 2006 came to be registered on 26-08-2006 with the

3rd respondent Police Station. It is significant to notice that the said crime came to be registered after first of the series of orders passed by this Court in the present writ petition i.e., on 23-08-2006.

In his statement before the learned Magistrate, the alleged detenue Gangadhar stated that on 14-12-2005, he left to Vijayawada. From there, he proceeded to Hyderabad and from Hyderabad, he went to Bangalore. He gave the details of his movements from time to time.

What is important to notice from his statement is that he was, admittedly, in contact with one Sreedhar, who lives in the Bank Colony of Bhimavaram. He also stated categorically that he contacted the abovementioned Chakravarthi and Anil. He was specific that he kept contact with Anil on latest mobile number. Anil's Mobile Number is 9866847907. The alleged detenue stated that he contacted both Chakravathi and Jayaraju on the land line. Their numbers were also given.

The above mentioned Chakravarthi and Anil in their statements, referred to earlier, categorically stated that the alleged detenue spoke to both of them from Bangalore, while in the case of Anil, it was in the month of April. Both the abovementioned persons made categorical statements that they informed the writ petitioner herein regarding the whereabouts of the alleged detenue.

The respondents also produced, now, some material to establish that the alleged detenue has been in constant touch with one Sreenivasa Rao of Palakollu, West Godavari District, who is said to be his maternal. The details of the various phone calls received by Anil, Chakravarthi and Sreenivasa Rao, from telephone enquiry, in the month of September, 2006, are also placed before the Court.

The above mentioned statements of Anil and

Chakravarthi coupled with the statement of the alleged detenue that he was in contact with Anil and Chakravarthi, *prima facie,* lead us to the conclusion that the writ petitioner did have knowledge of the whereabouts of his son Gangadhar, but misled this Court by filing the present Habeas Corpus petition with false statements that the said Gangadhar was found in the police custody on 25-06-2006. However, the truth of the matter can be ascertained only on an appropriate investigation into various relevant factors, which are required to be examined by the competent Court, in accordance with law.

In view of the prima facie conclusion reached by us, we deem it appropriate to direct the Registrar General of this Court to initiate appropriate proceedings against the petitioner herein for an offence under Section 193 IPC.

Insofar as respondents 1 to 4 are concerned, it is stated by the learned Advocate General that the incumbents of the offices of the respondents 3 and 4 herein by names N.Chiranjeevi, D.Sreenivisa Reddy, were already kept under suspension for enquiry into the matter. Insofar as the

1st respondent is concerned, obviously, no action is contemplated by the State. But, the role played by the 1st respondent in the matter requires an examination.

It is an established fact today, that the petitioner

sent a representation to the

1st respondent and the same was received by the 1st respondent's office on 04-02-2006. The

1st respondent stated before C.B.C.I.D. that he perused the representation sent by the petitioner, endorsed the same to the Circle Inspector, Bhimavaram Rural, for necessary action, who in-turn, endorsed the representation to the Sub Inspector of Police, Akiveedu Police Station. The Sub Inspector of Police, Akiveedu, sent a report dated 04-03-2006 to the Circle Inspector, Bhimavaram. The Circle Inspector, in-turn, forwarded the same on 09-04-2006 to the

1st respondent, which was received on 12-04-2006 by the 1st respondent.

As we have already noticed in our earlier order dated 24-08-2006 that the contents of the report sent by the 3rd respondent and the infirmities therein. In substance, while the 3rd respondent maintained that as the alleged detenue misappropriated certain properties of the

5th respondent company and absconding from the service in order to avoid action at the hands of the 5th respondent, the 3rd respondent added one sentence in manuscript to the effect that the petitioner requested 3rd respondent to drop further action as the alleged detenue

returned home.

In the said report of the 3rd respondent, another interesting feature which is required to be noticed is that the authorities of the 5th respondent-company lodged a complaint with the Bhimavaram II town police station and Bhimavaram II town Police Station called the petitioner to the police station and enquired about the matter. Even, as on today, there does not appear to be any crime registered on the record of Bhimavaram II town police station regarding any offence committed by the alleged detenue against the property of the 5th respondent- company.

In the background of all these loose statements and the interpolation made in manuscript by the 3rd respondent, the

1st respondent never thought it fit to examine the matter. The whole episode is a clear demonstration of absolute failure of superintendence on the part of the 1st respondent.

What shocks the conscience of this Court is that, when the 1st respondent received a complaint from the petitioner making an allegation that the 3rd respondent is refusing to register a crime and investigate the matter, the

he simply calls upon the 3rd respondent to submit a report and when the report is submitted by the

3rd respondent, without any further verification, simply accepts the same. A wonderful concept of superintendence and that is all is meant superintendence, we are of the opinion that the country can do well without a Superintendent of Police, at any rate, persons like an incumbent of

1st respondents office, henceforth. We also wish to place it on record at the cost of repetition that when the order adverse to the 1st respondent was passed by this Court, in the facts and circumstances of the case for the reasons recorded, the 1st respondent did not loose any time to carry the matter in appeal, which, of course, he is entitled to as a matter of right under the Constitution of India. We only wish that he had the same concern for the rights of the citizens, who reside within the territories over which he is acting as Superintendent of Police, with enormous powers under law.

Coming to the Sub Divisional Police Officer, R.Sivarama Raju, the C.B.C.I.D., pointed out a number of lapse on his part, however, in view of the fact that he is not a party before this Court in the present writ petition, we do not propose to examine those allegations. We, however, direct the Government of Andhra Pradesh to examine the lapses pointed out by the Additional Director General, C.B.C.I.D., on the part

of the

1st respondent and the S.D.P.O., and take appropriate action against both of them, if they wish that the statement of Anatole France.

> "The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread"
> (Anatole France, *The Red Lily, 1894, Chapter 7*)

should not be proved right, once again.

Coming to the 5th respondent, towards the fag end of the litigation, the 5th respondent chose to file a counter-affidavit, apart from anything else, he makes certain allegations against the officers of the C.B.C.I.D., to the effect that they went beyond their jurisdiction while examining the matter and submitting the report to this Court.

We do not wish to examine those allegations in the present writ petition. If the 5th respondent really has any grievance and feels that one of the legal rights of the 5th respondent are violated, it is open for it to take such appropriate steps in law, as are available to it for redressal of its grievance.

For the foregoing discussion, the writ petition is disposed of with the above observations, but in the circumstances, there will be no order as to costs.

J.CHELAMESWAR,J

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D.APPA RAO,J

October 26, 2006
KVR/mrk